

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

In the Matter of:)	
ALOHA HELICOPTER TOURS, LLC)	Docket No. FAA-2021-0398
Respondent)	Case No. 2020FS000020
)	

ANSWER TO COMPLAINT

TO THE HEARING DOCKET, THE HONORABLE J.E. SULLIVAN, ADMINISTRATIVE
LAW JUDGE, AND TO THE ADMINISTRATOR, FEDERAL AVIATION
ADMINISTRATION AND HIS ATTORNEYS OF RECORD:

Pursuant to 14. C.F.R Section 13.209, Respondent, ALOHA HELICOPTER TOURS,
LLC hereby answers the Complaint filed by the Administrator on July 27, 2021.

I.

1. Answering Section I. of the Complaint, Respondent admits that it was advised through
a Notice of Proposed Civil Penalty dated September 3, 2020, and by a Final Notice of Proposed
Civil Penalty dated July 6, 2021, that the FAA proposed to assess a civil penalty in the amount of
\$13,699 and that by letter dated July 21, 2021, Respondent timely requested a hearing. Except as
expressly admitted above, Respondent denies each and every, all and singular, allegations
contained therein, and each and every part thereof, both generally and specifically, conjunctively
and disjunctively.

II.

2. Answering Paragraph II.1. of the Complaint, Respondent admits that it is the holder of

an air carrier certificate number 1LHA143Q issued under Federal Aviation Regulation (“FAR”) Part 119 with the authority to conduct on demand air carrier operations under FAR Part 135. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

3. Answering Paragraph II.2. of the Complaint, Respondent admits that its flight operations under FAR Part 135 were subject to the requirements of Respondent’s operations specifications. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

4. Answering Paragraph II.3. of the Complaint, Respondent admits that on or about March 5, 2020, Respondent operated a Partenavia P68B aircraft, registration number N7668B, on an intended flight from Honolulu, Hawaii to Lihue, Hawaii. Respondent avers that the aircraft never left the ground and never operated in flight on March 5, 2020. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

5. Answering Paragraph II.4. of the Complaint, Respondent admits that the pilot in command of the operation of March 5, 2020 was one William E. Zeffiro. Respondent avers that Mr. Zeffiro is the owner of Aloha Helicopter Tours, LLC. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

6. Answering Paragraph II.5. of the Complaint, Respondent admits that there was a

passenger on board the aircraft for a brief moment in time during start up and taxi. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

7. Answering Paragraph II.6. of the Complaint, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

8. Answering Paragraph II.7 of the Complaint, Respondent admits that William E. Zeffiro was not authorized under Respondent's operations specifications to act as a pilot in Respondent's flight operations conducted under FAR Part 135. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

9. Answering Paragraph II.8. of the Complaint, Respondent admits that as of March 5, 2020, William E. Zeffiro had not passed an oral or written test under 14 CFR §135.293(a), a competency check under 14 CFR §135.293(b) or a flight check under 14 CFR §135.299. Respondent avers that William E. Zeffiro had, however, passed oral and written tests and competency and flight checks under FAR Part 121. Except as expressly admitted above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

10. Answering Paragraph II.9. of the Complaint, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

11. Answering Paragraph II.10. of the Complaint, Respondent denies each and every, all

and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

III.

12. Answering the allegations of regulatory violation set forth in Paragraph III.1 (a), (b), (c), (d), (e), (f) and (g) of the Complaint, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively, and specifically denies that he violated Title 14, C.F.R. §§119.5 (g) and (l), 135.3(a)(1), 135.293(a) and (b) 135.299 and 91.13(a) or any other provision of the FAR's. Respondent further avers that said C.F.R. Sections speak for themselves.

13. Answering Paragraph III.2. of the Complaint, Respondent avers that 49 U.S.C Section 46301(a)(5)(a) speaks for itself. Except as averred to above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

14. Answering Paragraph III.3. of the Complaint, Respondent avers that FAA Order 2150.3B speaks for itself. Except as averred to above, Respondent denies each and every, all and singular, allegations contained therein, and each and every part thereof, both generally and specifically, conjunctively and disjunctively.

FIRST AFFIRMATIVE DEFENSE

As and for a separate and distinct defense, Respondent alleges:

I.

The enforcement action taken by Complainant is unwarranted by the facts, safety in air commerce and the public interest. Specifically:

1. Although a flight was intended, no flight ever occurred or was conducted on or about

March 5, 2020;

2. At all times pertinent hereto, N7688B was operated safely, prudently and in full accordance with the the P68B aircraft flight manual and its operating instructions and limitations;
3. The subject intended flight was to have been conducted for demonstration purposes as the passenger had represented to Respondent that she was a potential investor in Respondent.

II.

By virtue of the allegations, assertions and averments set forth in Paragraph I., Subparagraphs 1-3 of this First Affirmative Defense, the allegation(s) and finding(s) of regulatory violation(s) sought by Complainant are unwarranted by the facts, safety in air commerce and the public interest.

III.

By virtue of the allegations, assertions and averments set forth in Paragraph I., Subparagraphs 1-3, and Paragraph II of this First Affirmative Defense, the sanction sought by Complainant is unwarranted by the facts, safety in air commerce and the public interest.

SECOND AFFIRMATIVE DEFENSE

As and for a separate distinct defense, Respondent alleges:

I.

As and for a separate distinct defense, Respondent alleges:

I.

The Complainant's case is unwarranted and without basis or jurisdiction in law or fact.

WHEREFORE, it is prayed that the Administrative Law Judge not enter an order that Respondent be assessed a civil penalty in any amount, that the Complaint be dismissed with prejudice, that Respondent's costs and expenses incurred in the defense of this action be awarded to it under the Equal Access to Justice Act; and for such other and further relief as may be deemed appropriate.

Respectfully submitted this 6th day of August 2021.

AVIALEX LAW GROUP, LLP

/s/ Michael L. Dworkin
(electronically signed)

Michael L. Dworkin
Managing Partner

951 Mariners Island Boulevard
Suite 300
San Mateo, CA 94404
Telephone: 415-421-2500
FAX: 415-421-2560
Email: law@avialex.com

Co-counsel for Respondent
ALOHA HELICOPTER TOURS, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Complaint was sent via email to the following recipients on August 6, 2021:

Federal Aviation Administration
Hearing Docket Clerk, AGC-430
Email: 9-AGC-FAA-HearingDocket@faa.gov

Office of Hearings
Department of Transportation
Email: M20.HrgDocs@dot.gov

Zachary Berman, Esq.
Federal Aviation Administration
Enforcement Division, Northeast Team
Email: Zachary.Berman@faa.gov

David G. Bettencourt, Esq.
Email: airlaw@pixi.com

/s/ Michael L. Dworkin
(electronically signed)
Michael L. Dworkin